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1.0 **FOREWORD**

by

Mr. Daniel M. Malcolm (Chairman)

- 1.1 The Turks and Caicos Islands Economic and Political history has experienced some volatility in the short term.
- 1.2 The advent of high end Tourism coupled with targeted infrastructural works have transformed the Turks and Caicos economy virtually overnight into one of robust size and proportions.
- 1.3 In 2002 Caribbean Financial Forecasters dubbed the Turks and Caicos Islands burgeoning Economy as the envy of the region.
- 1.4 This year, following a short period of almost catastrophic decline, the Turks and Caicos Islands economy has rebounded, with the Tourist Sector posting impressive gains. The main indicators are showing:
 - (a) Total tourist arrivals projected to pass the million plus number this year for the first time.
 - (b) A Credit Rating pegged as Triple B plus by the Financial Analysts Standard and Poor of the United States.
 - (c) The current 2014/2015 Budget already posting signs of a projected surplus.
- 1.5 Keeping pace with the Economic and Financial sectors are the Political and Social areas.
- 1.6 The year 1976 had ushered in an advanced Constitution, the hallmarks of which were:
 - (a) A Premier
 - (b) A Ministerial Form of Government.
- 1.7 This Constitution was generally recognized as being second only to the Bermudian Constitution among British Overseas Territories in the Caribbean. As late as 2006, an all Turks and Caicos Islands Constitutional Commission returned a series of recommendations upgrading the 1976 Constitution, which was again pegged as the flag bearer of the region.
- 1.8 Of the 2006 Constitution, the Department of Political Affairs of the United Nations observed in an invitation to the Chairman of the Commission to attend a Regional Seminar held in Grenada in 2007 –

“Please note that a five page, single spaced, paper on the ‘Constitutional Modernization Review process in the Turks and Caicos Islands’ and lessons learnt

that might be applicable to other Non-self Governing Territories, for presentation at the Seminar, would be expected.”

- 1.9 However, in the period commencing 2009 it all came to a crashing halt.
- 1.10 What followed was a Commission of Enquiry into allegations of corruption, headed by Sir Robin Auld, the aftermath of which was:
 - (a) Suspension of the 2006 Constitution.
 - (b) Serious charges against Senior Ministers of Government.
 - (c) A U.S. \$260 million plus loan package guaranteed by the U.K Government.
 - (d) Appointment of Ms. Sullivan of New Zealand to conduct countrywide meetings with all citizens and residents alike, and thereafter to submit recommendations for the enactment of a new Constitution.
- 1.11 Whilst this 2014 Constitution Committee is mindful of moving on, and permitting recent past events to undergo a healing process, we nevertheless feel we would be remiss in not casting these events into their proper perspective.
- 1.12 The Constitution of the Turks and Caicos Islands provides for a Chief Executive, who, whilst representing the Head of State, Her Majesty Queen Elizabeth, the Second, also functions as the Head of Government (as President of the Cabinet).
- 1.13 Given the Powers and Responsibilities allocated to the Governor, and the Checks and Balances enshrined in the Constitution, we feel that adequate provision exists to enable any Governor to properly discharge his functions, and guard against abuses or excesses in the system.
- 1.14 It is regrettable that any Chief Executive could have permitted the events of the period preceding the Commission to occur, and the situation in the Country to have deteriorated to the extent that it did, without employing some of the many Constitutional options available to him.
- 1.15 Clearly some blame for these events must be laid not only at the feet of the Chief Executive, but also at the doorstep of those of his Superiors who were advised and warned almost on a daily basis, that the Administration of the affairs of the country had taken a dramatic downturn.
- 1.16 There are therefore matters arising out of this situation which relate to the Terms of Reference of this Committee, and unpalatable though they may be, these matters have to be addressed and resolved in this exercise.

2.0 **INTRODUCTION**

- 2.1 This current Constitution (2011) was enacted following a suspension of major sections of the 2006 Constitution, and the imposition of an Interim Constitution Order of 2009. The main provisions of the 2009 Constitution Order were:
- (a) The replacement of the Cabinet with an Advisory Council – to advise the Governor.
 - (b) A Consultative Forum replacing the Hon., House of Assembly.
- 2.2 In 2013 the Turks and Caicos Islands were visited by a fact finding delegation from the Caribbean Community of Nations CARICOM, among whose mandates were to –
- (a) Examine the political situation in the Turks and Caicos Islands.
 - (b) Make recommendations respecting same.
- 2.3 Another of the CARICOM Delegation’s subsequent recommendations was that a Constitutional Committee be appointed by the House of Assembly to revisit the 2011 Constitution with a view to addressing any anomalies therein.
- 2.4 By September of 2013, the House of Assembly approved a Resolution to appoint a Select Committee of seven (7) persons to conduct a review of the 2011 Constitution. Six (6) persons were initially appointed to the Committee. These were –
- (i) Hon. Akeira Missick – Deputy Premier and Minister of Education, Youth, Sports and Library Services;
 - (ii) Hon. Ricardo D. Gardiner – Minister of Border Control and Labour;
 - (iii) Hon. Sharlene L. Robinson – Leader of the Opposition;
 - (iv) Hon. Sean R. Astwood – Member of the House of Assembly for the District of Five Cays, Providenciales;
 - (v) Mr. Carlos W. Simons – Q.C. Attorney at Law;
 - (vi) Mr. Ashwood L. Forbes – Attorney at Law.
- 2.5 In August of this year 2014, the House of Assembly appointed the seventh (7th) member (and Chairman) of the Constitutional Committee – Mr. Daniel Malcolm.
- The Terms of Reference of the Committee were inter alia, to,
- (a) “Review the Constitution of the Turks and Caicos Islands, and hold consultations with the public and interested groups, and make recommendations for Constitutional changes to be debated and ratified by the House for onward submission to the Foreign and Commonwealth Office.”
- 2.6 The Constitutional Committee was further advised by the House of Assembly that an Interim Report was to be submitted to the Speaker of the House within one (1) month following the conclusion of the final Public Meeting.

- 2.7 The date for submission of the Final Report was no later than 15th November, 2014.
- 2.8 The Committee has concluded its round of Public Meetings of all the major Islands, receiving extremely excellent comments, submissions and observations from as wide a cross section of our Citizens and Residents as possible.
- 2.9 It was noteworthy that, given the background from which our appointment and events surrounding it sprang, not surprisingly, most of our citizens were skeptical of the validity and outcome of this process.
- 2.10 The Committee however remains convinced that our recommendations will receive the attention and concerns of the U.K. administration at the highest level.
- 2.11 It was this attitude that pervaded our first public meeting of September in the nation's capital of Grand Turk.

3.0 **ACKNOWLEDGEMENTS**

- 3.1 The Committee wishes to officially thank
- (a) Hon. Speaker and Hon. House of Assembly for this confidence in us.
 - (b) The Media – Press, Radio and Television whose coverage throughout this exercise could not be faulted.
 - (c) Our Citizens and Residents who:
 - (i) Attended and contributed to our public sessions;
 - (ii) Engaged in Private Sessions with the Committee;
 - (iii) Made written submissions;
 - (iv) Engaged us one on one, offering their views, opinions and suggestions.
 - (d) Our support staff –
 - (i) Our Secretary – Mrs. Tracey Parker;
 - (ii) Assisting the Secretary – Ms. Karen Higgs and other support staff personnel;
 - (iii) The District Commissioners and their staff who provided logistical support.
 - (e) The Restaurateurs and Caterers.
 - (f) The Moderators of our meetings.

- (g) The Pastors and their Church Congregations.
- (h) Organisations and their Religious Groups.

4.0 **THE CONSTITUTIONAL PROCESS**

- 4.1 The actual process was launched in the wake of our first meeting in Grand Turk, with a conference in Providenciales to which all the Media outlets were invited.
- 4.2 The response was heart warming and overwhelming.
- 4.3 Following this outreach to the Managers and Stakeholders of the Media, a virtual media blitz was launched, and coverage of our activities was so complete and compelling, that it may have affected the actual personal, one on one turn out at our Public Meetings.
- 4.4 Whilst we cannot single out any one particular entity of all the Media outlets for special mention, it was nevertheless noteworthy that the National Radio Station saw fit to give us live and repeat coverage of our public meetings throughout the country.
- 4.5 Additionally, we had:
 - (a) Spot announcements of our activities on Radio and Television on a daily basis for weeks on end.
 - (b) Coverage by the Media complete with Photo opportunities.
 - (c) Extensive, in depth and occasionally round the clock news coverage, particularly on T.V.
 - (d) Personal contact by various Organisations, Groups and Service Clubs.
 - (e) Letters to Churches.
 - (f) One on one contact with groups and individuals.
- 4.6 The following Public Meetings were held at these locations:-
 - (i) Grand Turk
 - (ii) Salt Cay
 - (iii) Providenciales
 - (iv) Bottle Creek, North Caicos
 - (v) Middle Caicos
 - (vi) Kew, North Caicos
 - (vii) South Caicos

In all, approximately 269 persons attended these meetings.

4.7 Additionally, we held Private Meetings with several organisations and groups of individuals:

- (a) Pastors Fraternal, Grand Turk
- (b) Complaints Commissioner
- (c) Chairman and Members of the Public Service Commission
- (d) Pastor Bradley Handfield

4.8 We further solicited and received written submissions from groups and individuals.

- (a) Soroptimist International, Grand Turk
- (b) Baptist Union
- (c) Mr. Royal Robinson, MBE
- (d) Mr. Edric Potter - Former Commissioner of Police
- (e) Mr. Anand Heeraman
- (f) Native Men Fellowship, Providenciales
- (g) Andrew Cater

These were in response to disseminating information with respect to

- (a) A website address specially set up for this purpose
- (b) Telephone numbers and fax addresses also to facilitate same.

5.0 **CONDUCT OF MEETINGS**

5.1 Prior to the start of each meeting, the Clerk distributed copies of both 2006 and 2011 Constitutions, to enable our audiences to more easily follow discussions.

5.2 The 2011 Constitution is naturally divided into an initial section, followed by ten (10) different parts. These sections and parts are:

- (a) Section commencing Citation, Commencement.
- (b) Part I - Fundamental Rights and Freedoms of the Individual.
- (c) Part II - The Governor
- (d) Part III - The Executive
- (e) Part IV - The Legislature
- (f) Part V - The Judicature
- (g) Part VI - The Public Service
- (h) Part VII - Institutions Protecting Good Governance
- (i) Part VIII - Crown Land
- (j) Part IX - Public Financial Management
- (k) Part X - Miscellaneous

- 5.3 Each Committee Member was allocated one (1) or more Parts, and it was his or her responsibility to briefly summarize that Part or Parts for the benefit of our audiences, and where necessary compare that Part to what obtained in the 2006 Constitution.
- 5.4 We next invited the audience to offer comments, submissions etc. based on the complete briefing we had just concluded.
- 5.5 What is produced in this Report are these comments and submissions, and the Committee's recommendations arising therefrom, following receipt of those comments and submissions.

6.0 **THE REVIEW PROCESS**

- 6.1 In approaching this, the core of our exercise, the Committee remained forever mindful of Clause 2 of our Terms of Reference which states, inter alia:
 - (a) "The Committee shall review the provisions of the constitution and develop discussions points around controversial or undesirable provisions to stimulate public discussion and debate."
- 6.2 The initial section of the 2011 Constitution commencing with 'Citation and Commencement' is virtually identical with the 2006 Constitution. There is however one (1) important and notable exception:
- 6.3 Section 7 Subsection (1) provides for a continuation of the office and functions of the Chief Financial Officer (CFO) after the coming into effect of the 2011 Constitution, until
quote "such time as the Governor, acting in his or her discretion and with the prior approval of a Secretary of State, determines otherwise, by notice published in the Gazette." unquote.

(The office of the CFO had come into being earlier by Ordinance. This is a new creation.)
- 6.4 There was a general consensus that the office of the CFO ought not to be included in the Constitution.
- 6.5 It mattered not that we took pains to explain to our audiences that the office of the CFO was perhaps thought to be necessary in view of the fact that the U.K. Administration is acting as Guarantors of our U.S. \$260 million plus loan, the feeling in general, seemed to be that this action virtually rises to the level of an insult to our Minister of Finance at worst, or a downgrading of his responsibilities at best.

6.6 Our audiences further reminded us that not withstanding the Guarantee of the U.K. Government:-

- (a) The loan portfolio was for the account of the TCI Government and its people, and no other entity.
- (b) We the people therefore, were shouldering the burden of the repayment of these loans, and no one else.
- (c) Not only were we shouldering this burden successfully, but unlike some other territories, the question of a default in our repayment schedule was extremely remote.
- (d) Whilst it was questionable as to whether or not the U.K. Administration was violating the letter of the Constitution with the appointment of a CFO, there was absolutely no doubt that the spirit of the Document was under very serious threat.

6.7 As a Committee of the People, we understand and are sympathetic to these concerns. However, when or where the powers of a Minister of Government appear to be diluted, then that action rises to a level of concern that we ignore at our peril.

7.0 **PART I: DEALS WITH THE FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL**

7.1 As with the 2006 Constitution, the Fundamental Rights and Freedoms of the Individual is found at Part I of the 2011 Constitution. The general purpose of this part was to continue to ensure that all citizens and residents of the TCI enjoyed certain basic rights subject of course to qualification.

7.2 Audiences were pleased to note that provision was made under section 18 for Protection of the Environment (a new provision), however considerable discourse ensued with respect to these sections:-

- (a) Section 6 Subsection (2)(g) of the 2006 Constitution, with the automatic right under Subsection (2)(g) to a Trial by Jury being removed;
- (b) Section 10 of the 2011 Constitution respecting the protection of the right to marry and found a family; and
- (c) Section 12, the protection of the right to education.

7.3 With respect to the Repeal of the automatic right to a Jury trial by those persons accused of offences on information brought before the Supreme Court, our audiences were virtually unanimous that, notwithstanding the fact that Jury trial was still in place, since it was only the automatic right that was repealed and not the trial by Jury itself, nonetheless the automatic right ought to be reinstated and therefore not subject to waiver by the Director of Public Prosecutions (DPP). This would of course necessitate an amendment to the Trial by Jury Ordinance.

7.4 In relation to Section 10 of the Constitution, that section which deals with the right to marry and found a family, again our audiences were generally satisfied that the language of this section was adequate to protect the institution of marriage as being a union between one man and one woman.

7.5 However, curiously enough, it was not what was said with which our audience found some measure of misgiving, rather it was with what was not said. To explain this reasoning, what in fact our audiences were telling us was that since Section 10 did not say expressly and implicitly that

quote “Marriage can only be between one man and one woman”. unquote.

then the possibility therefore exists that in some future court action challenging the authenticity of the definition of marriage, the current definition may not prevail.

7.6 The Committee begs to differ, and has addressed this in our Recommendations.

7.7 Lastly, under Section 12 there was widespread discussion and comment as to whether Education to Primary School level should continue to be free. The current policy of the TCI Government is that consistent with E.U. and other Conventions re the Rights of the Child, education up to the Primary School level is indeed free. In fact the actual age for the Free Education is between 4 years to 16 years.

7.8 The submissions of our audiences fall broadly into three (3) categories. These are:

- (i) Permit all children up to the Primary School level to attend school free, but thereafter charge a fee for non TCI Islanders attending Secondary School, the fee to be paid by the Employers of the parents of such children.
- (ii) Permit all children of compulsory age whether TCI Islanders or not to attend school free of charge, however work closely with Border Control to ensure that as far as is humanely possible, children of such age have a legal right to be here.
- (iii) The right to free education should only be extended to those children of compulsory age who are either Turks and Caicos Islanders by birth or descent, or were born in the Turks and Caicos Islands.

Our Recommendations re the above follow.

8.0 **PART II: THE GOVERNOR AND PART III: THE EXECUTIVE**

- 8.1 Generally, our audiences seemed to be content with the composition of and appointments to the Cabinet. These are
- (a) The Governor
 - (b) The Premier
 - (c) Six (6) Ministers drawn from the Elected or Appointed Membership, one of whom is appointed Deputy Premier
 - (d) The Deputy Governor and Attorney General.
- 8.2 The appointment of the Deputy Governor to the Cabinet appeared to evoke some reaction, as also did the Statement of Government Principles. It does appear that very few of our audiences are even aware that there is something called a ‘Statement of Governance Principles’ or indeed the contents of such a Document. Our Recommendation follows accordingly.
- 8.3 The majority of persons in our audiences, were, as indeed was the case with the 2006 Constitution, concerned that the powers of the Governor were too all embracing and needed to be reviewed. It was communicated to us that perhaps the situation with respect to the powers of the Governor needed to revert to that of the 2006 Constitution, with a caveat being that even in those cases referred to, all decisions by the Governor to override the Cabinet should first come from a Secretary of State.
- 8.4 The setting of the Agendas for Cabinet meetings was next aired by some of our audiences. It was advanced by some that this ought not to be an exclusive privilege exercisable only by the Governor.
- 8.5 It was requested of us to address the matter in our Recommendations.
- 8.6 We go next to the Premier – his powers and privileges.
- 8.7 Our audiences’ discussions were centered mainly around
- (a) The conditions that ought to be in place for the post of a Premier
 - (b) His tenure in office
 - (c) His powers and responsibilities with respect to
 - (i) Appointment of Ministers
 - (ii) Prorogation and Dissolution of the House of Assembly
 - (iii) His interaction, if any, with the Integrity Commission.

9.0 **PART IV: THE LEGISLATURE**

9.1 The Islands enjoy a unicameral system, with the House of Assembly being the single chamber. The composition of the House of Assembly is as follows:-

- (a) A Speaker, who may be elected from among the elected or appointed members of the House, or alternatively drawn from outside the House.
- (b) Fifteen (15) elected members.
- (c) Four (4) appointed members.
- (d) The Attorney General.

9.2 Two (2) issues surfaced with respect to the composition of the House of Assembly. The first was that the new Electoral districting provides for:

- (a) Ten (10) single member constituencies returning ten (10) Representatives.
- (b) One (1) all country constituency returning five (5) Representatives.

This was somewhat different from the 2006 Constitution which provided for fifteen (15) single member constituencies.

9.3 Because of this new electoral arrangement, the Island of Salt Cay remained aligned with Grand Turk – South, while Middle Caicos Island was now aligned with North Caicos.

In particular, residents of both Islands (Salt Cay and Middle Caicos) now without direct, personal representation clamoured for the introduction of the system of Local Government for their districts, to alleviate the situation.

9.4 The second issue which provoked considerable discourse amongst all Citizens was the provision of Section 47.

Section 47 provides for the appointment of the four (4) Appointees to the House of Assembly as follows:

- 47(1) (a) Two shall be appointed by the Governor acting in his or her discretion, and,
- (b) Two shall be appointed by the Governor, acting after consultation with the Premier and Leader of the Opposition.

9.5 The concern of our audiences centered around:-

- (a) The number of Appointed Members allocated to the Governor.
- (b) The number of Appointed Members allocated to the Premier and Leader of the Opposition.
- (c) The method of appointment of the Premier's and Leader of the Opposition's two (2) choices.

9.6 Our audiences were virtually unanimous in calling for:

- (a) A reduction of the number of the Governor's Appointees from two (2) to one (1).
- (b) An increase of the number of the Premier's Appointees from one (1) to two (2).
- (c) The number of Appointees of the Leader of the Opposition to remain at one (1).

9.7 The rationale for the changes is very simple:

Firstly, in a very close General Election (as presently obtains) with the Progressive National Party (P.N.P) winning eight (8) seats to the People's Democratic Movement (P.D.M) securing seven (7), the Balance of Power is held by the two (2) Governor's Appointees.

9.8 The effect of this is that although the P.N.P won the General Election of 2012 by a tally of eight (8) seats as against the seven (7) seats by the P.D.M, for all intents and purposes the PNP functions as a Minority Government.

Secondly, the situation is further compounded by the fact that the two (2) Appointed Members that the Premier and Leader of the Opposition have available to them, are both appointed only after consultation with the Governor. In theory, although the Governor would normally be expected to appoint those persons advised to him after consultation, in actual fact he can, under Constitutional Law, appoint someone else.

9.9 These are anomalies which, judged by any standards, should not be allowed to remain in any Constitution. We must therefore address them accordingly, and do so in our Recommendations. Continuing, we go next to Section 49 subsection 1(e).

9.10 Section 49 subsection 1(e) is concerned with the disqualification of Elected or Appointed Members of the House of Assembly for a period of fifteen (15) years which serves as the period of disqualification which the Constitution has mandated should be the term set aside for persons who having served a sentence of one (1) year or more, wished to again run for Public Office.

9.11 A majority of persons felt that this was perhaps too long a period of disqualification, and we have therefore addressed submissions made in this regard.

9.12 We go next to Section 68 subsections 1 and 2 – Voting.

9.13 The general feeling among our audiences was that the question of voting in the House of Assembly (particularly by a Speaker drawn from outside the House of Assembly) should revert to what obtained in the 2006 Constitution, where such a Speaker had no casting vote. Our Recommendations refer.

10.0 **PART V: THE JUDICATURE**

- 10.1 Except for the subject of Judicial independence, Part V – The Judicature is in many respects identical to that of the provisions in the 2006 Constitution.
- 10.2 Section 77 makes provision for the establishment of the Supreme Court, its Judges and the method of their appointment.
- 10.3 Subsection (5) of Section 77 deals with the retirement of Judges.
- 10.4 Section 80 is concerned with the Court of Appeal, its President and Justices.
- 10.5 The Judicial Independence of the Courts can be found in Sections 83 to 85.
- 10.6 Section 86 deals exclusively with the Judicial Service Commission.
- 10.7 The Recommendations of the Committee refer.

11.0 **PART VI: THE PUBLIC SERVICE**

- 11.1 Part VI is primarily concerned with amendments to the structure and formation of the Public Service Commission.
- 11.2 Section 89 deals with the composition of the PSC and the method of appointment by the Governor of its five (5) members. The tenure in office of these members is also dealt with.
- 11.3 Important changes incorporated in the 2011 Constitution as distinct from 2006 are to be found in Section 90. These changes are concerned with:
 - (a) The appointment of senior members of the Public Service and
 - (b) The disciplinary control exercised over junior and senior members of the service.
- 11.4 Section 90 Subsections 6 and 7 deal with the appellate functions of the PSC, a feature missing in the 2006 Constitution.
- 11.5 Our Recommendations refer.

12.0 **PART VII: THE INSTITUTIONS PROTECTING GOOD GOVERNANCE**

12.1 Although the 2006 Constitution lists some of the Institutions Protecting Good Governance, this 2011 Constitution expands that list, groups the new section with the old, and present both in a unified, orderly fashion.

12.2 Our audiences responses although somewhat limited were insightful and timely.

13.0 **PART VIII: CROWN LAND**

13.1 Crown Land occupies its own Sections 106 – 108 in the 2011 Constitution.

13.2 The issues governing Crown Land are prescribed by an Ordinance – the Crown Land Ordinance, but generally Crown Land is under the aegis of the Governor who is empowered to consult the Cabinet in matters relating to Crown Land, but is not bound to act in accordance with their advice. Crown Land was previously under a Minister's control, following the Governor's remit.

13.3 His Excellency the Governor pursuant to Sections 108 and 29 (2) of the 2011 Constitution has now assigned the portfolio of Crown Land to the Attorney General's Office direction and control.

13.4 Our audiences were of one mind that this portfolio should be returned to a Minister.

14.0 **PART IX: PUBLIC FINANCIAL MANAGEMENT**

14.1 This is a new part to the Constitution, and deals primarily with

(a) The obligations of the Minister of Finance in dealing with these areas

- (i) Government Expenditure
- (ii) Government Excess Expenditure
- (iii) General withdrawals from the Consolidated Fund.
- (iv) An Appropriations Committee.

15.0 **PART X: MISCELLANEOUS**

- 15.1 Section 127. The Mercy Committee's work was well received, once persons understood the process, particularly regarding community involvement.
- 15.2 There was a serious concern emanating from the Islands of North, Middle and South that there should be legislation creating Local Government Councils as a matter of priority. Section 130 of the 2011 Constitution calls for such an establishment.
- 15.3 Our audiences made strong objections to the provisions of Section 132 Subsection 2 and 3 (a)(i) and (ii).
- 15.4 The prevailing feeling is that no one should be accorded a fast track to Turks and Caicos Islands status because of originating country.

16.0 **RECOMMENDATIONS**

16.1 **The Office of the Chief Financial Officer**

- The recommendations in this regard are that the U.K. administration take this matter under urgent and very serious review, and not wait until, as many in our audience believe "that the U.S \$260 million plus loans are either retired or substantially amortized."
- 16.2 The position and responsibilities of a C.F.O. and the Office of the Minister of Finance ought to be clearly delineated and defined as a matter of priority.
 - 16.3 We wish to respectfully advise that any dilution of the powers of an elected Minister of Finance cannot be regarded as anything but a violation of, if not the letter certainly the Spirit of the Constitution.
 - 16.4 The further recommendation is that the Office of the C.F.O. be taken out of the Constitution.

17.0 **PART I: THE FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL**

17.1 Of section 6(2) – Right to Trial by Jury:

It is recommended that Subsection (2)g of Section 6 of the 2006 Constitution be returned to the 2011 Constitution, such reinstatement to effectively return the automatic right to Trial by Jury to the 2011 Constitution.

- 17.2 With respect to Section 10 – Protection of right to marry and found a family:
It is recommended that Section 10 remains as it is currently drafted. The Section is clear and concise enough to withstand any challenge to institution of marriage as drafted, and the wording should therefore remain unaltered.
- 17.3 Section 12 – Dealing with Protection of right to education.
- 17.4 The Turks and Caicos Islands, is signatory to the E.U. (European Union) Convention of the Rights of the Child, and additionally Anti-discriminatory provisions are couched in this very Part dealing with ‘Fundamental Rights and Freedoms of the Individual’. The Recommendation is that Section 12 remains as is.

18.0 **PART II: THE GOVERNOR AND PART III – THE EXECUTIVE**

- 18.1 With respect to the position of the Deputy Governor, the question is whether or not, he or she should remain a Member of Cabinet as mandated by Section 25.
- 18.2 The Recommendation is that Section 25 remains unaltered and the Deputy Governor continues to be a full Cabinet member.
- 18.3 Section 28 and the Statement of Governance Principles have befuddled audiences from its introduction. No one appears to know what these are, or how they are best adhered to. It is recommended that a greater effort is mounted to acquaint our people with this document and the part it is intended to play in the conduct of our affairs.
- 18.4 Although not expressly or specifically spelled out in detail in the Constitution, the question of the setting and composition of the Agendas of Cabinet meetings appear to be a bone of contention that requires resolution. The actual facts are that
- (a) Whilst the Governor functions as the President of the Cabinet by virtue of Section 39(1) of the Constitution, nevertheless,
 - (b) The Premier is in fact the de facto Head of Government.
- 18.5 It is therefore recommended that the Premier be accorded the right and privilege of approving any Agenda by which meetings of the Cabinet are to be conducted, or failing this, to assume the responsibility of himself setting such Agendas.
- 18.6 We go next to the Premier.
- 18.7 Section 31 subsection 1(b) makes provision for the appointment of Premier by the Governor, but this Section does not spell out any personal qualifications which define his tenure of Office.

18.8 Audiences throughout the length and breath of the Turks and Caicos Islands are of the view that the time has come when the Premier of the country is mandated to be an indigenous Turks and Caicos Islander.

18.9 The Recommendation therefore is that the qualification for Premier should now include that such a person be a Turks and Caicos Islander -

- (a) Born in the Islands to parents, one of whom is a Turks and Caicos Islander who was himself or herself born in the Islands; or
- (b) Born outside the Islands to parents, one of whom was himself or herself a Turks and Caicos Islander;
- (c) Should have a connection with the Islands.

18.10 With respect to 31(3) Term Limits:

There appeared to be no support at all for the disqualification for Premier of a person, who having served two (2) consecutive terms as Premier was now seeking the appointment as Premier for a third consecutive term. The recommendation is that this disqualification which is contained in the Constitution should be repealed.

18.11 Section 34(1)(d) and (e) provide for a Minister to vacate his office on the recommendation of the Integrity Commission, if the Minister breaches the Code of Conduct for persons in Public Life, or breaches Section 103 which provides for the Registration of Interests of Persons in Public Life.

18.12 The Recommendation is that this Section be suitably amended as follows:-

18.13 The Integrity Commission ought to be required to report the matter to His Excellency the Governor, who in turn takes the matter to the Attorney General and Cabinet. The onus is now on the Attorney General to advise the Governor in Cabinet. Due process would have been satisfied and the Minister (subject to whatever action is taken) now has sufficient grounds to pursue the matter further.

19.0 **PART IV: THE LEGISLATURE**

19.1 It is recommended that the unicameral system be retained.

19.2 With respect to Section 47 – the Appointed Members, and their method of Appointment, it is recommended that there should continue to be four (4) Members.

19.3 However, their appointment should be follows:-

- (a) One (1) should be appointed by the Governor acting in his discretion.

- (b) Two (2) should be appointed by the Governor acting in accordance with the advice of the Premier, and
 - (c) One (1) should be appointed by the Governor acting in accordance with the advice of the Leader of the Opposition.
- 19.4 With respect to Section 49(e) the Recommendation is that the period of disqualification from elective politics should be reduced from fifteen (15) years to ten (10) years.
- 19.5 The Integrity Commission should not have the power to have the Speaker declare the seat of a member of the House of Assembly vacant as mandated in Section 51(3). It is recommended that the Speaker be required to consult with the Attorney General in the matter, and the question of vacation be determined by the Attorney General and not the Integrity Commission.
- 19.6 With respect to Section 60 and the Electoral Boundary Commission, the Recommendation is that we revert to the Constitutional position of 2006 vis-à-vis the appointment of members.
- 19.7 Voting – Section 68. A Speaker drawn from outside the House should not have a casting vote. It is so recommended.

20.0 **PART V: THE JUDICATURE**

- 20.1 It was recommended that the Chairman of the Judicial Service Commission be appointed by the Governor on the advice of the Premier and the other two members after consultation with the Premier and Leader of the Opposition.

21.0 **PART VI: THE PUBLIC SERVICE**

- 21.1 It was advised to the Committee during the Consultative Process that the position of Deputy Chairman of the PSC should be created.
- 21.2 This submission is accepted, and it is so recommended.
- 21.3 The concern of many in the system was that consideration should be given to a return to the 2006 Constitution with respect to
- (a) Formation of the Public Service Commission,
 - (b) The Governor's discretionary powers, and obligations of consultation,
 - (c) The Governor's discretionary powers specifically over removal and disciplinary actions for the Public Service.

- 21.4 These submissions have merit, and it is so recommended.
- 21.5 It is further recommended that consideration be given to the inclusion in the Public Service Commission of a Member, who either
- (a) possesses some legal expertise or,
 - (b) has a legal background.
- 21.6 Lastly, it was submitted to us that the Public Service Ordinance has become outdated, and it should now be brought more in line, in tune with the Constitution. We concur, and so recommend.

22.0 **PART VII: INSTITUTIONS PROTECTING GOOD GOVERNANCE**

- 22.1 It is recommended for this Part that a Review of the Integrity Commission Ordinance as it relates to these several entities be conducted.

23.0 **PART VIII: CROWN LAND**

- 23.1 With respect to the Portfolio of Crown Land, the recommendation is that it be placed under the responsibility of a Minister.
- 23.2 It may very well be that provisions of the Ordinance need to be revisited. With a change of authority, such may be the case.

24.0 **PART IX: PUBLIC FINANCIAL MANAGEMENT**

- 24.1 No Recommendations attach to this Part.

25.0 **PART X: MISCELLANEOUS**

- 25.1 With respect to Section 132, which relates to the status of a Turks and Caicos Islander: The Recommendation is that in Subsection 3(a) (i) and (ii) the words beginning ‘...or a British Citizen’ and ending ‘...for a period of at least ten years,’ should be deleted.

OTHER MATTERS OUTSIDE OUR TERMS OF REFERENCE

There were one or two matters raised by individuals throughout this exercise that in our opinion are worthy of mention. We have included these in a separate section since our Terms of Reference did not specifically embrace these:

The Labour Tribunal

- (a) It was felt in some quarters that the subject of the Labour Tribunal should be included in the Constitution under the Part “Institutions Protecting Good Governance”. Committee Members disagree.
- (b) It was however conceded that the work of the Tribunal is essential to the Economic health of the Community, and more attention should be devoted to its operation.

A Referendum on this exercise or alternatively an Independence Referendum. With respect to a Referendum on this exercise after its conclusion, it was pointed out that this was not practical, given the fact that there are many issues in a Constitution that a Referendum would have to address.

With respect to a Referendum on Independence, this is a matter for the political hierarchy, and not within our Terms of Reference.

POSTSCRIPT

We again wish to thank our Government and People for giving us this opportunity to be of service to our country. It has throughout, always been a Labour of Love.

This Report is committed to all our People, from every walk of life, rich, poor, of whatever station, or status. It is for the benefit of all.

May God continue to be our Beacon and our Guide, and may his richest blessings always be our portion. This is our hope and prayer.

Daniel M. Malcolm
(Chairman – Constitutional Review Committee)

APPENDIX 1

Turks and Caicos Islands House of Assembly

Constitutional Committee

Terms of Reference

Background

The Turks and Caicos Islands Constitution Order 2006 was suspended in August 2009 and replaced by the Interim Constitution Order 2009. Under the Interim Administration the Terms of Reference for the drafting of the new Turks and Caicos Islands Constitution Order 2011 was developed. The public consultation for the development of the new Constitution was conducted by Kate Sullivan. The majority view is that the views of the people were not sufficiently incorporated in the 2011 constitution and that this work was undertaken in the absence of a democratically elected Government, notwithstanding the input given by representatives of established Political Parties.

The Turks and Constitution Order 2011 came into force on October 15 2012. The elected government and members of the House of Assembly believes that a review is necessary with the challenges and serious concerns raised about a number of clauses of the Constitution that appear ambiguous, inconsistent and regressive. To this end the House of Assembly has approved the establishment of a Constitutional Committee of the House of Assembly to review the Constitution and make recommendations for constitutional change to the House of Assembly.

Committee Mandate

The mandate of the Constitutional Committee is to review the Constitution of the Turks and Caicos Islands and hold consultations with the public and interested groups and make recommendations to the House of Assembly for constitutional changes to be debated and ratified by the House for onward submission to the Foreign and Commonwealth Office.

Committee Membership

The Committee shall consist of 2 elected members from either side of the House: one member each appointed by the Premier and Leader of the Opposition from outside the membership of the House and one member appointed jointly by the Premier and Leader of the Opposition who shall be Chair.

The Membership of the Committee are:

Government: Hon. Akierra M. D. Missick, Hon. R. Don-Hue Gardiner and Carlos Simons, QC, OBE

Opposition: Hon. Sharlene Cartwright-Robinson, Hon. Sean Astwood, and Ashwood Forbes, Esq.

Chair: Mr. Daniel Malcolm

Terms of Reference

1. The Committee will usually meet at the House of Assembly or at any suitable location as determined by the Chair and approved by the Speaker of the House.
2. Two members each from the Government and Opposition shall constitute a quorum.
The Committee shall review the provisions of the Constitution and develop discussion points around controversial or undesirable provisions to stimulate public discussion and debate. The Committee shall hold at least one Meeting on all major Islands and no more than two public consultations in an electoral district.
3. Public consultations shall not exceed a total of eight weeks
4. The Committee shall hold no more than 20 Meetings and shall include preparatory meetings prior to the start of public consultation and Meetings for the preparation of the final report.
5. The Committee may entertain meetings with special groups upon request if feasible.
6. The Committee shall make available an email address or contact information to the public to facilitate written submission from members of the public or stakeholder groups.
7. The Chair shall produce a report documenting various comments and contributions and making recommendations for constitutional changes within one month after the completion of public consultation. However the final report shall be submitted NO LATER THAN November 15, 2014
8. The Constitutional Review Report shall be laid on the Table of the House by the Hon Premier and there shall be a debate.
9. The Premier shall develop a Resolution to accept the recommendations of the Committee and the House shall vote on such Resolution.

10. The expenses of the Committee shall be paid by the House of Assembly or from such Ministry as the Minister of Finance may direct ie Premier's Office or Ministry of Finance.
11. Only the Chair shall be remunerated for each meeting at a fee equivalent to that of Chairman of Boards and a payment of \$5000 for the production of the report.
12. The Clerk to the House or her designate shall act as Secretary to the Committee.